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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: *Implementation of the Pay Telephone Reclassification and  
Compensation Provisions of the Telecommunications Act of 1996,  
CC Docket No. 96-128 and NSD File No. L-99-34*

Dear Ms. Salas:

Enclosed please find an original and four copies of the RBOC Payphone Coalition's Opposition to One Call Communications, Inc.'s Petition for Waiver in the above referenced matter. Please date-stamp and return the extra copy to the messenger.

Thank you for your assistance. If you have any questions, please do not hesitate to call me at (202) 326-7921.

Sincerely,

  
Aaron M. Panner

Enclosures

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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.**

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OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Pay Telephone	)	
Reclassification and Compensation	)	CC Docket No. 96-128
Provisions of the	)	
Telecommunications Act of 1996	)	
	)	
RBOC/GTE/SNET Payphone Coalition	)	NSD File No. L-99-34
Petition for Clarification	)	

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**THE RBOC PAYPHONE COALITION'S  
OPPOSITION TO ONE CALL COMMUNICATIONS, INC.'S  
PETITION FOR WAIVER**

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**INTRODUCTION AND SUMMARY**

The RBOC Payphone Coalition<sup>1</sup> hereby opposes the Petition for Waiver filed by One Call Communications, Inc. One Call's petition does not present any "special circumstances" warranting a departure from the general rules adopted in the *Second Recon. Order*.<sup>2</sup> To the contrary, the core issue that the Commission addressed in that order was the assignment of per-call compensation obligations for calls routed to switch-based resellers like One Call. One Call's request for waiver is not justified by any considerations applicable to One Call alone or to a small

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<sup>1</sup> The Coalition includes BellSouth Public Communications, SBC Communications Inc., and the Verizon telephone companies.

<sup>2</sup> Second Order on Reconsideration, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 16 FCC Rcd 8098 (2001).

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sub-class of resellers; rather, to the extent that One Call seeks relief from the Commission's rules, its petition amounts to a belated attack on the rules themselves.

One Call seeks a "waiver" of its obligation to pay IXCs compensation for calls originated by PSPs that already have an arrangement for payment of per-call compensation with One Call. This request is superfluous, because the Commission's rules already make clear that PSPs and resellers may maintain existing contractual arrangements for payment of per-call compensation if they choose to do so. Any disputes that One Call may have over this matter with the IXCs with which it does business do not justify any modification of the Commission's rules.

One Call also asks the Commission to establish an elaborate set of conditions that would apply uniquely to One Call and that would impose additional regulatory obligations on IXCs before such IXCs could collect reimbursement for per-call compensation payments from One Call. Relatedly, One Call asks that the Commission waive the requirement that it reimburse IXCs for the cost of tracking the calls that those IXCs carry for One Call. Again, One Call's request cannot properly be considered a request for a waiver at all but is instead a belated request for reconsideration of the Commission's order. In any event, the Commission should refuse to get involved in disagreements between IXCs and resellers over the amount of reimbursement to be paid for per-call compensation. IXCs and resellers are free to negotiate mutually satisfactory arrangements to implement the requirements of section 64.1310(b); One Call cannot explain why the Commission should interfere with private contractual arrangements in this circumstance.

## **ARGUMENT**

To qualify for a waiver, a petitioner must show that "special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest." *Northeast*

*Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). “This language refers to circumstances that were not present or considered when the rule was adopted.” Memorandum Opinion and Order, *Petitions for Waiver of Part 69 of the Commission’s Rules to Establish Switched Access Rate Elements for SONET-based Service*, 11 FCC Rcd 21010, 21021, ¶ 26 (1996) (citing *Industrial Broad. Co. v. FCC*, 437 F.2d 681, 683 (D.C. Cir. 1969)).

One Call cannot satisfy this standard. Most fundamentally, One Call makes no persuasive showing of any “special circumstances” that would merit relief from the Commission’s rules. Such a showing is indispensable, because unless a petitioner is able to demonstrate that its own circumstances differ substantially from those that the agency had in mind when it adopted the rule at issue, a request for waiver simply amounts to an attack on the rule itself or a naked request for preferential treatment. That is precisely the situation here. In the *Second Recon. Order*, the Commission explicitly addressed the situation in which “coinless calls placed from payphones . . . involve a switch-based telecommunications reseller [like One Call] in the call path.” *Second Recon. Order* ¶ 1. The Commission determined that in such situations, the first facilities-based IXC to which a LEC routes such a call is responsible for paying compensation; the reseller is required to reimburse the IXC for such payments and for the expense of call tracking. At the same time, the Commission’s rules permit resellers and PSPs to enter into contracts and to ratify pre-existing contracts that provide for direct payment of compensation.

One Call is a switch-based reseller, and the Commission’s rules squarely address calls that are routed to carriers like One Call. One Call’s effort to explain how its situation is different from the situation of any other switch-based reseller is wholly unpersuasive. One Call claims

that its situation is “virtually unique” because of its “widespread contractual arrangements with PSPs and its ability to track calls.” Pet. at 4. But the Commission explicitly considered and addressed both of these factors. It specifically preserved the ability of resellers and PSPs to enter into direct contractual arrangements for payment of per-call compensation. *See Second Recon. Order* ¶ 19. And it specifically anticipated that facilities-based IXC’s may rely on their reseller customers to provide call tracking for calls routed to those resellers; in other words, the Commission was well aware that some switch-based resellers have tracking capability (indeed, all switch-based resellers were responsible for tracking compensable calls or arranging for another carrier to do so under the Commission’s prior rules). *See id.* ¶ 16. The rules that the Commission adopted accordingly reflect the Commission’s balancing of interests with respect to both of these matters. One Call cannot escape application of the Commission’s rules simply because it believes another arrangement would be more to its liking. In any event, One Call’s petition does not justify any departure from the Commission’s rules.

**I. THE SECOND RECON. ORDER PERMITS PSPs AND RESELLERS TO MAINTAIN PRE-EXISTING CONTRACTUAL ARRANGEMENTS GOVERNING PER-CALL COMPENSATION**

One Call asks the Commission for a “waiver” excusing One Call of its reimbursement obligations “if it certifies that it has paid compensation to a PSP pursuant to contract.” Pet. at 6. But no “waiver” is necessary to protect One Call’s ability to maintain contracts with PSPs, because the Commission’s rules already provide that “[f]acilities-based carriers *and resellers* may establish *or continue* any other arrangements they have with payphone service providers for the billing and collection of compensation for calls to § 64.1300(a), if the involved payphone service providers so agree.” 47 C.F.R. § 64.1310(b) (emphasis added). As the Commission held,

the *Second Recon. Order* did not “nullify private contractual arrangements to which PSPs have already agreed, if all involved parties wish to continue them.” *Second Recon. Order* ¶ 19.

Accordingly, to the extent that One Call has valid “direct compensation arrangements with . . . PSPs” (Pet. at 5), those arrangements remain in effect if (but only if) the PSPs who were party to those pre-existing arrangements agree.

If such arrangements are in effect, then One Call has no obligation to compensate IXCs for the calls for which it is already paying compensation. It is the responsibility of One Call, however, to make arrangements with IXCs for the provision of adequate information to the IXC to enable the IXC to make appropriate adjustments to its per-call compensation payments to the affected PSPs. For example, the IXC might request a copy of the agreement and a post-April 2001 ratification of the agreement by the PSP, or other documentation to ensure that One Call in fact has a valid agreement. An IXC may appropriately demand such documentation and refuse to accept One Call’s mere “certifi[cation]” (Pet. at 6) because, in the absence of a valid agreement entered into by the PSP, the first-switch IXC remains liable for per-call compensation payments for all calls routed to its switch. Indeed, the fundamental purpose of the *Second Recon. Order* was to eliminate the problems caused when “facilities-based carriers and switch-based resellers determine independently that they are not responsible for compensating PSPs under [the Commission’s] rules.” *Second Recon. Order* ¶ 14. The existing rules protect resellers that have valid agreements with PSPs, but the rules appropriately forbid a carrier from gaming the system by claiming that it is compensating a particular PSP when it is not, in fact, doing so.

## **II. THE COMMISSION SHOULD NOT INTERFERE WITH PRIVATE ARRANGEMENTS IMPLEMENTING RESELLERS' REIMBURSEMENT OBLIGATIONS**

In the pending reconsideration proceeding, a number of carriers ask the Commission to micro-manage the terms of private contractual arrangements between IXC's and their reseller customers that implement the reimbursement requirement of 47 C.F.R. § 64.1310(b). One Call's petition for "waiver" contains a similar request; in particular, One Call asks the Commission to place a number of elaborate conditions on IXC's' ability to obtain reimbursement for per-call compensation payments from One Call and to bar IXC's from recovering the costs of call tracking from their reseller customers. One Call's request that it be treated differently from all other similarly situated switch-based resellers is plainly improper. Moreover, the Commission should reject all pleas for interference in the contractual arrangements implementing section 64.1310(b).

Throughout the payphone proceeding, the Commission has been guided by the basic principle that the competitive market can best set prices, as well as the terms and conditions governing private contractual relationships. *See, e.g.,* Report and Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 20541, 20567, ¶ 49 (1996). "It is only in cases where the market does not or cannot function properly" that the Commission needs to intervene. *Id.* The setting of the per-call compensation rate and ensuring that such compensation is paid is a paradigm case where regulatory intervention is required: by definition, default per-call compensation is paid when no contractual arrangement exists (*see* 47 C.F.R. § 64.1300(a)), and IXC's have little motivation to enter into contracts with PSPs because PSPs are prohibited from blocking dial-around calls.

By contrast, in the case of IXC's and their reseller customers, the relationship between the parties is established through contract. The Commission relied on the fact that "facilities-based carriers . . . have a customer relationship with resellers" in placing responsibility for payment of per-call compensation for all payphone calls squarely on those facilities-based resellers. *Second Recon. Order* ¶ 16. The Commission should rely on the same contractual mechanism to resolve any disagreements between facilities-based IXC's and their reseller customers over reimbursement amounts for per-call compensation.

As the Coalition will explain in greater detail in its reply comments on the petitions for reconsideration and clarification (where this issue is properly addressed), section 64.1310(b) of the Commission's rules requires resellers to reimburse IXC's for compensation amounts and for the expense of call tracking. This rule ensures that IXC's and resellers can renegotiate existing arrangements to accommodate the Commission's revised requirements. The rules do not, however, dictate the manner in which the IXC and reseller will calculate the amount to be reimbursed, either for per-call compensation or for call tracking. That is a matter for IXC's and resellers to work out on their own. Private business negotiations in the market can be counted on to discover the most efficient mechanism, and if a particular reseller is better situated than another to track calls (for example), then there is no obstacle to its taking full advantage of that expertise in its negotiations with IXC's. IXC's, for their part, may gain an advantage over their facilities-based competitors by offering service to resellers on more favorable terms. In the absence of a showing of fundamental market failure, there is no reason for the Commission to interfere with this process.



Accordingly, the terms and conditions governing reimbursement under section 64.1310(b) should be left to private negotiations, lest the Commission “restrict resellers” — and IXC’s — “freedom of contract.” Opposition of One Call Communications, Inc. to Petitions for Reconsideration and Petition for Declaratory Ruling at 2 (filed Oct. 9, 2001).

### **CONCLUSION**

The Commission should deny the petition for waiver.

Respectfully submitted,



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*Counsel for the RBOC Payphone Coalition*

October 19, 2001

## **CERTIFICATE OF SERVICE**

I, Tara Brooks, hereby certify that on this 22nd day of October, 2001, copies of the RBOC Payphone Coalition's Opposition to One Call Communications, Inc.'s Petition for Waiver to be served upon the parties listed below by first class U.S. Mail, postage pre-paid or by hand delivery indicated by an asterisk (\*).

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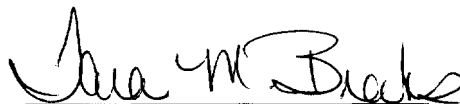
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A handwritten signature in black ink, appearing to read "Tara M. Brooks". The signature is fluid and cursive, with the first name "Tara" being the most prominent part.

Tara M. Brooks